



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Raul Asmal : ORDER
Tax Registry No. 962229 : OF
94 Precinct : DISMISSAL
-----X

Police Officer Raul Asmal, Tax Registry No. 962229, having been served with written notice, has been tried on written Charges and Specifications numbered 2021-23637, as set forth on form P.D. 468-121, dated July 1, 2021, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Raul Asmal from the Police Service of the City of New York.



KEESHANT L. SEWELL
POLICE COMMISSIONER

EFFECTIVE: 11/31/23



POLICE DEPARTMENT

November 17, 2022

-----X

In the Matter of the Charges and Specifications : Case No.
- against - : 2021-23637
Police Officer Raul Asmal :
Tax Registry No. 962229 :
94 Precinct :

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Raul Asmal, while assigned to the 94th Precinct, on or about June 25, 2021, at about 0945 hours, while off-duty, in or about Norcross, Gwinnett County Georgia, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Asmal wrongfully engaged in a physical altercation with his girlfriend in a vehicle outside her place of employment.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Police Officer Raul Asmal, while assigned to the 94th Precinct, on or about June 25, 2021, at about 1900 hours, while off-duty, in or about Norcross, Gwinnett County Georgia, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Asmal wrongfully engaged in a physical altercation with his girlfriend inside her residence.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

3. Police Officer Raul Asmal, while assigned to the 94th Precinct, on or about June 25, 2021, at about 1900 hours, while off-duty, in or about Norcross, Gwinnett County Georgia, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Asmal wrongfully refused to leave, or otherwise remained inside the residence of his girlfriend when she told him to leave her residence.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

4. Police Officer Raul Asmal, while assigned to the 94th Precinct, on or about June 25, 2021, at about 1900 hours, while off-duty, in or about Norcross, Gwinnett County Georgia, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Asmal wrongfully prevented his girlfriend from telephoning the police.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

5. Police Officer Raul Asmal, while assigned to the 94th Precinct, on or about June 25, 2021, at about 1900 hours, while off-duty, in or about Norcross, Gwinnett County Georgia, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer Asmal wrongfully used a knife to gain access to the locked bedroom of his girlfriend.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT
GENERAL REGULATIONS

6. Police Officer Raul Asmal, while assigned to the 94th Precinct, on or about June 25, 2021, at about 2030 hours, while off-duty, in or about Norcross, Gwinnett County Georgia, wrongfully was unfit for duty due to the consumption of intoxicants.

A.G. 304-04, Page 1, Paragraphs 1 & 2

FITNESS FOR DUTY

7. Police Officer Raul Asmal, while assigned to the 94th Precinct, on or about June 25, 2021, while off-duty, in or about Norcross, Gwinnett County Georgia, having participated in events with his girlfriend which resulted in a response by local law enforcement personnel, who escorted said Police Officer from the scene of an incident and issued him a "Criminal Trespass Warning," wrongfully failed to notify the Internal Affairs Bureau or the Operations Unit, as required.

P.G. 207-21, Page 1, Paragraph 1

ALLEGATIONS OF
CORRUPTION AND
OTHER MISCONDUCT
AGAINST MEMBERS OF
SERVICE -- COMPLAINTS

P.G. 212-32, Page 1, Note

OFF-DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE
SERVICE
COMMAND OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 15, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Department called Sergeant Andrew Jackson as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent guilty of all charges and recommends he be dismissed from the Department.

ANALYSIS

Background and Undisputed Facts

It is uncontested that on June 24, 2021, Respondent traveled to Gwinnett County, Georgia to visit his girlfriend (hereinafter “Complainant”). While she was at work the following day, he discovered that she had been unfaithful. Respondent reacted by driving Complainant’s car to her place of employment and, once there, told her to come out and meet him. Once they were both in the car, Respondent confronted her about the infidelity. (Tr. 52-53; Dept. Ex. 9B at 4-5) An argument ensued, the details of which are in dispute.

Complainant did not return to work that afternoon. Instead, she drove with Respondent back to her apartment where they continued arguing and engaged in a physical altercation. Police Officers Zachary Johnson and M.J. Graffo, from the Gwinnett County Police Department, responded to the apartment after receiving a call about a domestic dispute. Respondent identified himself as a member of service. The officers spoke to Respondent and Complainant separately. They determined that, although they observed injuries on both parties, and believed Respondent to be intoxicated, the incident did not qualify as a domestic incident under Georgia state law. Moreover, Complainant insisted that she did not want to file a criminal complaint and simply wanted Respondent to leave her home. After much coaxing, the officers convinced Respondent to accept a ride to a nearby hotel in their RMP. (Tr. 53-56, 84, Dept. Ex. 9B at 5-6; Dept. Exs. 15-16)

Officer Graffo dropped Respondent off at the local Motel 6. According to the incident report he prepared:

After dropping [Respondent] off at the hotel, I drove around the parking lot to get to the exit and was flagged down prior to my leaving by hotel management who stated that they did not want [Respondent] on the property. I then had to re-engage Mr. Asmal and ask him to leave the property, as hotel management stated that he was bothering other

customers who were present. Mr. Asmal argued and stated he had money and did not wish to leave but eventually agreed to walk down the street to a separate hotel. I observed Mr. Asmal's movements until he left the property. (Dept. Ex. 16)

Officer Graffo ended the report noting that Respondent repeatedly asked that he turn off his body-worn camera because they were "both police officers and he wanted to speak man to man." The officer refused and advised Respondent that their body-worn cameras were required to be turned on at all times. (Dept. Ex. 16)

Later that evening, the Gwinnett County Police Department responded to a second call for a domestic dispute at Complainant's apartment. How Respondent actually traveled back to that location is in dispute. Upon arrival, the officers separated the parties and again had to convince Respondent to leave. Complainant reiterated that she did not want Respondent to "get into trouble," but did agree that he should be issued a Criminal Trespass Warning. (Dept. Ex. 18; *see* Dept. Ex. 6A) Officer Johnson handed a copy of the written warning to Respondent and explained that if he returned to that location after receiving the warning he would be arrested. The body-worn camera footage captures Respondent tearing up that written warning. After much effort by the responding officers, Respondent departed in a cab for the airport. Respondent admits that he was "unfit for duty" but attributed his condition to the consumption of only "one beer." (Tr. 55, 67-68)

After Respondent left the scene, he called his command to inform them of his involvement in an unusual off-duty incident in Georgia; he was then advised to call the Operations Unit. Respondent reported that the Georgia police had responded to a house party he was attending and they asked him to leave. He made no mention of the domestic incident or the Criminal Trespass Warning he was issued. (Tr. 60-61, 88-89; Dept. Exs. 11A, 11B)

Specifications 1, 2, 3, 4, 5 and 6: Domestic Violence and Unfit for Duty Charges

At issue is whether Respondent: committed various acts of domestic violence; wrongfully refused to leave a private residence; prevented Complainant from phoning the police during a domestic incident; and, used a knife to wrongfully gain access to her after she locked herself in a room for protection. In addition, Respondent is charged with being unfit for duty. Respondent denies the domestic violence charges and alleges that any physical contact between him and Complainant was made in self-defense. After careful review of the record, I find that, although hearsay evidence, the multiple recordings documenting this incident were persuasive and support the allegations of misconduct. Below is a summary of the relevant evidence presented at trial.

DAO witness Sergeant Andrew Jackson was the Internal Affairs Bureau investigator assigned to this case. He obtained and reviewed multiple body-worn camera recordings from the Gwinnett County Police Department as well as recorded telephone conversations. These recordings were admitted into evidence.

The body-worn camera footage of the incidents establishes that when Police Officers Graffo and Johnson first arrived on scene, Respondent was drinking a beer and slurring his words. Police Officer Johnson asked Respondent to leave his beer on the counter before stepping outside to speak with him. From the outset, Respondent refused and became agitated, stating “You’re going to push me, bro,” when Police Officer Johnson pressed the back of his hand against Respondent’s chest to keep him from disregarding his order and walking outside with the beer bottle. Respondent remained uncooperative and argumentative as he challenged the officers. He asked, “Oh, so you’re gonna fuck with me, dog?;” adding, “I’m a cop too...” and “who are you going to believe?” Even after the officers explained that it is protocol to

separate the parties in domestic incidents, he remained uncooperative. (Dept. Ex. 5A at 1:09-2:03; Dept. Ex. 7A at 2:07-2:49)

Respondent eventually followed Police Officer Johnson outside and told the officers that “this girl, she slept with somebody, and the mom called” and added that he “want[s] to go” and not “deal with this shit.” After being asked to step away to create a safe space between them, Respondent reluctantly complied stating, “Yo, you want me to show you I ain’t going to do shit to you.” Respondent displayed his NYPD identification card and, instead of complying, justified his conduct by reiterating, “I’m not gonna hurt you.” Respondent appeared to stumble toward the officer who then reminded Respondent to step back to maintain a zone of safety. (Dept. Ex. 5A at 2:31-3:18)

Respondent told the officer again that Complainant had been unfaithful but she did not want to let him leave and physically stopped him from exiting. Respondent showed Officer Johnson a cut on his left forearm and scratches on the left side of his head that he attributed to Complainant’s attack. (Dept. Ex. 5A at 4:08) These injuries are noted in Officer Johnson’s incident report. (Dept. Ex. 15) Respondent emphasized that he just wanted to return to New York City. Officer Johnson acknowledged this and stated, “We’re gonna see if we can make that happen.” (Dept. Ex. 5A at 3:54-3:56) Respondent, however, inexplicably became agitated, inquired as to whether the officer’s body-worn camera was on, and in a confrontational tone asked whether the officers were going to arrest him. As Respondent touched the officer’s arm, he was again ordered to step back. Officer Johnson firmly added that as a member of the NYPD he must understand that distance is a matter of safety. Respondent asked, “Do I look like a fucking danger to you?” to which Officer Johnson replied, “No man. You just look like you’re a drunk guy....” Again, Respondent asked, “You recording me?” (*Id.* at 6:24-6:46)

As Police Officer Graffo interviewed Complainant inside the apartment, his body-worn camera captured their conversation. Complainant explained that Respondent called to say he had brought lunch to her place of employment. When she entered the car to join him, Respondent was already drunk and hit her saying, “You fucked somebody else.” (Dept. Ex. 7A at 3:15-4:13). She told Officer Graffo that she attempted to leave the car, but he would not “let” her. Respondent accelerated the vehicle and began to drive erratically. (*Id.* at 4:17-4:26) She pleaded that he stay at a hotel but Respondent refused.

The video captured Complainant telling Officer Graffo that when they returned to her apartment, Respondent struck her and then tried to take away her phone as she attempted to call 911. Complainant showed Officer Graffo the record of that interrupted call on her phone. (Dept. Ex. 7A at 4:27- 4:58) Officer Graffo asked Complainant, “Where did you get these,” as he gestured toward her face. Complainant responded, “Him” while pointing at the injuries around her jaw. (*Id.* at 5:37-5:40) She told the officer that Respondent choked her, scratched her and punched her in the face, causing a bruise to her lip. Complainant explained that she tried to defend herself and locked herself in a room for protection, but Respondent used a butter knife to pry open that door. She took the knife from him and held it, yelling at him to get out. (*Id.* at 5:40-6:20) She then showed Officer Graffo a video she recorded in which she is heard pleading with Respondent to “let her get out” as she cried “look what you did to me.” After playing the video, she told Officer Graffo that she “just wants him out” and insisted that she did not intend to ruin his career with an arrest. (*Id.* at 6:41-7:36) She added, “All of this because he caught me cheating.” (*Id.* at 7:58-8:00)

As documented by the body-worn camera footage, Officer Graffo then stepped outside to interview Respondent. Respondent indicated that, “[T]his bitch slept with somebody else, mom

wants to fucking talk shit, I wanna go home, she wouldn't let me leave, and that's it." (Dept. Ex. 7A at 8:18-8:30) Officer Graffo inquired about the injuries on him and Respondent replied that Complainant "scratched" him. When asked how Complainant received her injuries, Respondent shrugged, answered, "I don't know," pointed at his own scratches and explained that Complainant would not let him leave and he "push[ed] her away." (*Id.* at 8:31-9:09) Minutes later, he defied the officers to, "Collar both of us, bro. It's OK. I'm down." (*Id.* at 10:18-10:22) When the Complainant appeared at the door, Respondent asked, "Where do you want me to go, babe?" (*Id.* at 10:49) Respondent and Officer Johnson then walked to the complex parking lot. During that conversation, Respondent inquired multiple times whether the body-worn camera was still on and exclaimed, "Turn off your shit, turn off your shit." (Dept. Ex. 5A at 12:39-15:05)

Respondent appeared to be stumbling again when Officer Graffo asked why he was acting erratically. (Dept. Ex. 7A at 20:25-20:50) Officer Graffo advised him to get a cab because "you don't want to be picked up for public drunkenness or some shit." He also warned Respondent, "don't come back here tonight." (*Id.* at 21:34-21:46) Respondent again protested being recorded and in sum and substance asked the officer to turn the camera off to "talk cop to cop." (Dept. Ex. 5A at 22:37-22:40)

After a number of delays and some resistance, Officer Graffo personally drove Respondent to a nearby hotel. During the drive, Respondent continuously asked to "have a conversation" without being recorded and made a gesture with his hand to turn the camera off. (Dept. Ex. 7A at 26:45-33:45) Officer Graffo offered Respondent some sound advice, but was frustrated by Respondent's continued inappropriateness. Soon thereafter, hotel management reported that Respondent had become disorderly. For the second time that day, Officer Graffo

was compelled to remove Respondent from a location. Respondent was told to stay at an alternative hotel down the block. (*See* Dept. Ex. 16)

Body-worn cameras documented the Gwinnett County Police Department's third encounter with Respondent. Later that evening, Officers Graffo and Johnson and Sergeant Howard responded to Complainant's house. Respondent immediately told the officers, "She invited me in again, sleeping off on the couch, going to the airport." (Dept. Ex. 6A at 0:53-1:05) Complainant told Officer Johnson that Respondent walked back to her apartment and only made his way back in when she was leaving the house to pick up a relative. Complainant reiterated that she "just wanted him away." (*Id.* at 1:35-2:00) She showed Officer Johnson their text message thread in which she repeatedly affirmed that they "were over" and admonished him not to return to her home. (*Id.* at 2:56-5:18)

The officers then called the 94 Precinct to determine whether Respondent was an NYPD police officer. (Dept. Ex. 8A at 10:20-12:30; Dept. Ex. 2A at 15:13-24:54) After verifying his employment, and confirming that Complainant did not want to file a criminal complaint, Respondent was issued a written Criminal Trespass Warning. (Dept. Ex. 18) Respondent tore his copy of the document and sarcastically asked the police officers if they would "get him for littering too." Respondent then left the premises in a cab. (Dept. Ex. 6A at 28:58-29:57)

The primary issue raised by the proof is whether the hearsay evidence admitted into evidence is sufficiently reliable to support a finding that Respondent physically abused Complainant. Although hearsay, I find that the multiple recordings documenting Complainant's account were entirely convincing and established by a preponderance of the evidence that Respondent engaged in the charged misconduct.

Credibility assessment is a task of carefully reasoned judgment. In this case, the body-worn cameras captured Complainant's immediate reaction to these incidents as she reported them to the police. Her immediate outcry for protection enhanced Complainant's credibility. Moreover, the recordings of her statements are tantamount to a contemporaneous statement which evinces reliability because they eliminate "the likelihood of deliberate misrepresentation or faulty recollection . . ." (*People v. Brown*, 80 N.Y.2d 729, 733 [1993])

The credibility of Complainant's hearsay statements were further enhanced by her candid acknowledgment of various facts that were not particularly helpful to her claims and some facts which were probably embarrassing to her. For example, Complainant openly acknowledged that she had been unfaithful, that she had inflicted injuries on Respondent (albeit in self-defense) and that she had grabbed a knife from Respondent and brandished it. Equally persuasive was the fact that Complainant showed no real animus against Respondent, nor was there a detectable motivation for fabrication. On the contrary, she repeatedly told the officers that Respondent should not be arrested and wanted assurances that they would not "hurt" Respondent's career. Her only objective was to get him out of her home.

This tribunal also found Complainant's first conversation with NYPD Sergeant Denis, to be compelling and consistent with what this tribunal observed on the videos. During that June 26, 2021 interview, Complainant informed Sergeant Denis that Respondent was drinking and "out of control" after he discovered her infidelity. He drove to her workplace with the ruse that he had brought lunch, and when she entered the car he repeatedly slapped her in the face. She told him to take her home because she began to see bruises on her face. Respondent initially calmed down, but the anger resurfaced. Upon his request, they went to buy beer so he could

“calm down.” Instead, he grew more agitated and she told him to stay at a hotel. When he refused, she was forced to return to her home with him. (Dept. Exs. 9A, 9B at 3-6)

During the interview, Complainant also told Sergeant Denis that the arguing escalated and Respondent hit her again. She then locked herself in a room to escape, but he used a knife to open the door. She grabbed the knife from him and recorded him as she begged him to let her out of the house as she showed him “what [he] did to [her] face.” Complainant was quite clear that Respondent did not brandish or threaten her with the knife. She also emphasized that she did not file a criminal complaint and expressed concern that this domestic incident would “get [him] in trouble” or “ruin his record” at work. She even volunteered that she “scratched” Respondent. Sergeant Denis confirmed that the two had not spoken since the incident. (Dept. Exs. 9A, 9B at 8-10, 13-17)

Listening to the interview, and reading the accompanying transcript, it is clear that Complainant spoke earnestly and dispassionately as she endeavored to give an honest and even-handed account. Her reluctance to say anything that would negatively impact Respondent was palpable and she openly took responsibility for her own actions. Due to these factors, this interview, and Complainant’s statements recorded by the police officers, were accorded significant probative weight.¹

¹ In making this finding, I acknowledge that in a follow-up phone call later that day, Complainant told Sergeant Denis that she deleted the video because the incident was “no big deal.” She also minimized what occurred stating that they “argued,” “pushed each other around” and “at some point [she] just locked herself in the room.” When asked if Respondent “punched” her, she answered no. She attempted to avoid answering questions about her injuries by stating that she gave him scratches as well. In this conversation, she sounded more guarded and tentative. She also admitted that she had texted Respondent earlier and that they were “trying to work things out.” (Dept. Exs 10A, 10B at 2-6) This tribunal attributes her attempted recantation, in part, to the parties’ recent contact and new efforts at reconciliation. I also attribute this to the interviewer’s misstatement of her prior claims. As noted above, Complainant responded in the negative when the interviewer asked whether Respondent had “punched” her. In fact, during their prior interview, Complainant had clearly asserted that she was “slapped,” not punched. In sum, her second and final conversation with the NYPD is likely unreliable and therefore lacks the probative weight of Complainant’s prior accounts and the evidence depicted in other recordings.

In contrast, Respondent's testimony in defense of the charges was far from compelling. As a general matter, Respondent's statements, at the scene and at trial, were vague and tentative. It seemed that the more central the fact was, the more imprecise his recollection became. One would expect that these unusual events would be indelibly imprinted into Respondent's memory -- yet they plainly were not. Moreover, Respondent's consistent disrespect and obstinance during his interactions with law enforcement was disgraceful -- particularly when contrasted with the courtesy and civility with which he was treated by the Georgia police.

At trial, Respondent testified that when he discovered that Complainant was unfaithful, he drove her vehicle to her place of employment with the intention of leaving it there and departing to New York City. According to Respondent, it was Complainant who wanted to talk at her apartment and it was she who pushed him in the car. He claimed that once at the apartment, he kept trying to leave but Complainant prevented him from doing so by grabbing him. As a result, he sustained injuries, including a cut to his forearm. He explained that he became concerned for Complainant's well-being after she locked herself in a room. He admittedly used a butter knife to pry open the door, but only to determine that she was "okay." He recounted that the Gwinnett County police officers eventually arrived, separated them and later escorted him to a hotel. (Tr. 52-55, 57-58, 73, 77, 80)

Respondent asserted that Complainant subsequently drove him from the hotel to her home. He did admit, however, that Complainant texted him, "[D]o not come here, I don't want you here." (Tr. 58, 59, 85, 86) When the police showed up for a second time, they issued him a Criminal Trespass Warning and he subsequently took a cab to the airport. Respondent admitted that he was unfit for duty, but attributed his condition to the consumption of only "one beer." (Tr. 55, 67-68)

In sum, Respondent's account was self-serving and strained credulity. Not only did he use deflection when asked about Complainant's injuries, but he untruthfully claimed that Complainant drove him back to her apartment after the police drove him to a hotel. His repeated assertions that she insisted he not leave and that she physically prevented him from doing so is illogical in light of the body-worn camera video capturing Complainant's pleas for him to just leave her alone. It is also an incredible assertion given how difficult it was for the officers to get him to comply with their orders to depart. In fact, one of the officers drove him personally to a hotel to ensure his departure.

Respondent's credibility was also damaged by his repeated claim acknowledging that he was unfit for duty but insisting he drank only "one beer." The level of intoxication captured in the recordings, during such an extended period of time, defies description. Respondent was defiant, illogical, discourteous, dismissive, vulgar and uncooperative toward officers who exhibited nothing but professionalism and respect toward him. In fact, his level of intoxication and misconduct was so troubling that the officers from Georgia could not believe that Respondent was a member of the NYPD. When Complainant confirmed Respondent was a member of service, an officer expressed his incredulity by exclaiming, "like, for real?" (Dept. Ex. 7A at 3:41-3:43) This type of conduct cannot be tolerated by the Department.

Accordingly, this tribunal finds Respondent guilty of Specifications 1, 2, 3, 4, 5 and 6.

Specification 7: Failure to Report Unusual Off-Duty Incident

It is uncontested that Respondent did call the Operations Unit to report an incident that occurred in Georgia. However, the information Respondent provided was misleading and dishonest. Respondent told the Operations Unit that police officers in Georgia responded to a

house party he was attending and that when he identified himself as a police officer, they told him to leave. Respondent's account was so patently illogical that the Operations Unit officer was confused as to why he was making a report at all. What Respondent neglected to inform the Department of was that he was involved in a physical altercation with his girlfriend that resulted in a police response; that the police escorted him off that property and then again from a hotel where he was harassing guests. Finally, he failed to add that he was issued a Criminal Trespass Warning. (*See* Dept. Exs. 11A, 11B)

Respondent's testimony explaining that he was "emotional" and "wasn't sure of what to say" is not credible, as he told an inaccurate version of events where his role was completely minimized. (Tr. 89) Respondent has a duty as a Member of Service to report any off-duty incident that he was involved in, and to report the incident truthfully. Accordingly, I find Respondent guilty of the charge set forth in Specification 7.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on October 11, 2016, has been found guilty of engaging in a physical altercation where he caused injury to his girlfriend after striking her multiple times over the course of one day and numerous other acts of misconduct constituting domestic violence. In addition, Respondent has been found guilty of being unfit for

duty due to intoxication. The presumptive penalty for domestic violence and for unfitness for duty, each by themselves, is 30 penalty days; dismissal probation; counseling; and, in this case, ordered breath testing. The aggravated penalty for each separate category is Termination.² The Department Advocate has recommended termination as the appropriate penalty; based on the totality of the facts and circumstances, I agree that Respondent's continued employment is untenable.

Here, the record is flush with aggravating factors relevant to the domestic violence incident and devoid of mitigating circumstances. The following aggravating factors listed in the Disciplinary Guidelines are undisputedly applicable to this case.

- Respondent's girlfriend was injured during the altercation;
- Alcohol was a factor in the incident;
- Respondent both refused to leave her residence and gained entry to a locked bedroom by forceable means;
- Respondent confiscated her phone in an attempt to prevent a call for police assistance;
- Respondent failed to comply with the directives of on-duty officers to leave and not return to his girlfriend's residence;
- Respondent failed to report the incident to this Department.

Given the totality of circumstances of Respondent's misconduct in the domestic violence case, the likely number of penalty days under the Guidelines would be greater than 90; at which point the presumptive penalty becomes termination or forced separation. (*See Disciplinary Guidelines* at pp.13, 36-38)

Equally troubling is that, while unfit for duty, Respondent engaged in egregious and extended misconduct during his three separate interactions with the law enforcement officers in Georgia attempting to handle his case. Reviewing the videos clearly reveals that the responding

² Not only was alcohol consumption an aggravating factor in the domestic dispute. Respondent's inebriation also warrants a separate penalty because its impact extended beyond his interaction with Complainant. As detailed above, Respondent's protracted misconduct during his interaction with Georgia officers was sufficiently egregious to require a separate aggravated penalty.

officers were merely attempting to separate the parties, and upon completion of their investigation, sought to have Respondent voluntarily leave his girlfriend's residence. Instead of complying, Respondent stubbornly insisted on prolonging the interaction by failing to comply with their lawful orders. In his excessively inebriated state, Respondent countered the courtesy and professionalism with which he was treated by the officers with disrespect and obstinance. For example, at one point he taunted the officers, who were asking him to call a cab, to arrest him by placing his hands behind his back and provoking them to do so. Within minutes of driving Respondent to a hotel to spend the night, the hotel manager flagged down the officer and asked that Respondent be removed for harassing other customers. When Respondent is issued a Criminal Trespass Warrant, for disobeying their orders and returning to Complainant's home for a second time that day, he defiantly ripped the document and asked whether the officers are going to get him for "littering." In sum, officers in Georgia had to divert resources and spend significant time dealing with the upheaval caused by a highly intoxicated, and unfit, NYPD officer in their jurisdiction.

Respondent's misconduct, while unfit for duty, did not end there. It is deeply troubling that he repeatedly asked, or suggested, that the officers turn off their body-worn cameras. In fact, during Respondent's initial 30-minute interaction with these officers, he asked the officers approximately *fourteen times* to either turn off their body-worn cameras or whether they were still recording. A number of times, he explained that he wanted the cameras turned off to "talk." The casualness Respondent exhibited in making such a frequent request is unsettling and calls into question his ability to follow police protocols during his own interactions on the job.

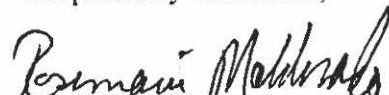
Respondent's misconduct is further compounded by the fact that he misrepresented what actually occurred when he called to report an unusual off-duty incident to the Department. His

statement that the local police asked him to leave a house party is far from the truth and evinces an intent to minimize possible disciplinary consequences. Respondent was also untruthful when he told this tribunal that he was “unfit for duty” after consuming only “one beer.”

I also note that Respondent was a UMOS for less than five years at the time of this incident and that he was rated “Needs Improvement” in 2020 and “Meets Standards” in 2019 and 2021.

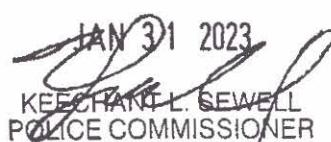
In sum, Respondent’s behavior evinces a lack of self-control and good judgment that is incompatible with his continued service as a member of this Department. The fact that the Georgia police were in such disbelief that Respondent was a member of the NYPD, while not dispositive, is extremely telling. Although this is his first encounter with the disciplinary process in his relatively short career, Respondent’s behavior over the course of this incident was abhorrent and his retention as a police officer would be an affront to the men and women of the NYPD who conduct themselves, both on-duty and off-duty, appropriately and in a manner consistent with the Department’s values and mission. Accordingly, I recommend that Respondent be DISMISSED from the Department.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

JAN 31 2023

KEECHANT L. SEWELL
POLICE COMMISSIONER



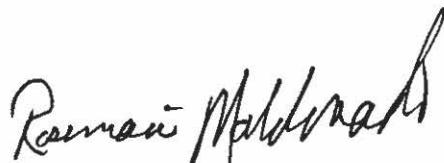
POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER RAUL ASMAL
TAX REGISTRY NO. 962229
DISCIPLINARY CASE NO. 2021-23637

Respondent was appointed to the Department on October 11, 2016. On his three most recent annual performance evaluations, he was rated “Meets Standards” for 2019 and 2021 and “Needs Improvement” for 2020.

Respondent has no disciplinary history. In connection with the instant matter, Respondent was suspended without pay from June 26 to July 25, 2021, and placed on Level 2 Discipline Monitoring in March 2022. Monitoring remains ongoing.

For your consideration.

A handwritten signature in black ink that reads "Rosemarie Maldonado".

Rosemarie Maldonado
Deputy Commissioner Trials